

restraint of trade or commerce in the State of North Carolina. Further, notwithstanding G.S. 95-25.8, an agreement requiring an agricultural producer to transfer funds to a labor union or labor organization for the purpose of paying an employee's membership fee or dues is invalid and unenforceable against public policy in restraint of trade or commerce in the State of North Carolina.

See DE 34-2 (2017 Farm Act) at 23.

3. The Act renders voluntary dues check-offs and settlement agreements involving union recognition, or entry into an agreement with the union, invalid and unenforceable. In so doing, the Act imposes sweeping obstacles to Plaintiffs' and other farmworkers' rights to engage in the expressive and associative activities of union organizing and to enter voluntary agreements with willing agricultural employers.

4. Plaintiffs filed this action on November 15, 2017, *see* DE 1, and filed a motion to preliminarily enjoin enforcement of the Act on November 20, 2017, *see* DE 7, 8. After amending their Complaint on February 5, 2018 (*see* DE 31), Plaintiffs filed an Amended Motion for a Preliminary Injunction on February 6, 2018. DE 34, 35.

5. On September 20, 2018, this Court adopted the Opinion and Recommendation of Magistrate Judge Auld (DE 56), and entered an order preliminarily enjoining Defendant from enforcing the Act. DE 62.

6. As demonstrated in Plaintiffs' brief and the exhibits supporting this Motion, there is no genuine dispute as to any material fact, and Plaintiffs are entitled to judgment as a matter of law that Section 20.5 of the Farm Act violates the First Amendment and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

7. As this Court determined when it adopted Judge Auld's recommendation on Plaintiffs' Amended Motion for a Preliminary Injunction, and as further established by the evidence filed in support of this Motion, Plaintiffs would suffer irreparable harm if the Act were no longer enjoined, including: violation of their First Amendment rights to expression and association; criminal and civil liability should they continue to engage in their regular expressive and associative activities outlawed by the Farm Act; loss of opportunities to negotiate and enter into voluntary union-related agreements with agricultural employers; and irreparable damage to Plaintiff FLOC's core organizational functions and operations. None of these are injuries that monetary damages can address.

8. Entry of a permanent injunction poses no harm to Defendant, as it would restrain enforcement of an unconstitutional law. An injunction would serve the public interest by ensuring that Plaintiffs and other farmworkers may continue to exercise their constitutional rights to expression and association.

9. The Act infringes on the constitutional rights of an estimated 100,000 farmworkers in North Carolina and subjects them and their sole union to criminal and civil liability for engaging in commonplace union organizing activities. In light of this far-reaching impact and the multiple ways in which the Farm Act violates Plaintiffs' constitutional rights, Plaintiffs respectfully request leave to present oral argument related to this Motion on a date to be determined by the Court.

WHEREFORE, Plaintiffs respectfully request that this Court:

- (a) Set a date on which to hear oral argument on this Motion;
- (b) Permanently enjoin enforcement of Section 20.5 of the Farm Act;
- (c) Order Defendant to immediately notify his officers, agents, employees, and other persons in active concert or participation with him, including the administrative and judicial officials of all state courts, if a permanent injunction is entered;
- (d) Order such other relief as this Court deems just and equitable.

Respectfully submitted this 14th day of August, 2020,

/s/ Kristi Graunke

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CERTIFICATE OF SERVICE

I certify that on August 14, 2020 I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will serve counsel for Defendant.

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